



**OKLAHOMA
Funeral Board**

Oklahoma Funeral Board
3700 N. Classen Blvd, Suite 175
Oklahoma City, Oklahoma 73118
405.522.1790

MEMORANDUM & BOARD PACKET

November 5, 2021

TO: MEMBERS

Tom Coble
J. Cooper
Joe Highberger
Brent Matherly
Jim Roberts
Mike Sanders
Chad Vice

BOARD STAFF

Ron DeWitt
Shayne Melton
Ashton Poarch, AAG
Rochelle Robinson
Thomas Schneider, AAG

FR: Tyler Stiles

RE: November 10, 2021 Regular Board Meeting

Please find the attached November 10, 2021 Oklahoma Funeral Board agenda and the drafted October 14, 2021 regular meeting minutes. I have also attached the drafted language for the statute change. If you have any questions or if you cannot attend next week's meeting, please contact me.

Reminder that the November meeting is on Wednesday instead of the normal Thursday.

Tyler Stiles, MBA
Executive Director
Oklahoma Funeral Board

OKLAHOMA FUNERAL BOARD
3700 North Classen Blvd, Suite 175
Oklahoma City, Oklahoma 73118

NOTICE OF REGULAR MEETING

MEETING PLACE: Videoconference at

<https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>

We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

DATE & TIME: November 10, 2021 10:00AM

A copy of this notice of meeting and agenda has been posted in a prominent location at the office of the Oklahoma Funeral Board, 3700 North Classen Blvd Suite 175, Oklahoma City, Oklahoma, on November 5, 2021 at 11:30AM. A copy of this agenda is available on the Funeral Board website at www.ok.gov/funeral

If attending via videoconference or via telephone Continuing Education credit will not be provided for this meeting. If you plan to attend a Board meeting for Continuing Education credit and would like a rough estimate of the length of time Board staff estimates the meeting might last, please email your request to info@funeral.ok.gov.

*** This symbol denotes the application and/or applicant is not in compliance with 235:1-1-2 (c) (14 day Rule)

ORDER OF BUSINESS: The Board may discuss, vote to approve, vote to disapprove, vote to table, change the sequence of any agenda item, or decide not to discuss any item on the agenda.

1. Roll Call

2. Reading of the Oklahoma Funeral Board mission statement

The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

3. Approval of the October 14, 2021 Regular Board meeting minutes
4. Oklahoma Funeral Director Association Update from a Representative of OKFDA
5. Review complaints with possible vote for probable cause or other action

22-05- Overcharging

22-09- Cremation Issues/ Overcharging/Death Certificate Issues

22-10- Embalming Issues

22-11- Body Intake Log Issues/No Licenses Displayed

22-13- Ethics Issues

22-14- Material Misrepresentation

6. Matters for consideration: Consent Order or Scheduling Order

At the conclusion of the parties' presentation and any questions or public discussion by the Board, the Board may in each complaint case:

- i. consider and vote on motion(s) to conduct executive session(s) pursuant to 25 O.S.2011, Section 307(B)(8) to engage in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act;
- ii. if an executive session is held, designate a person to keep written minutes of the executive session;
- iii. consider and vote on motion(s) to exit executive session and return to open meeting; and
- iv. consider and vote on motion(s) regarding possible action to be taken regarding matter discussed in executive session.

6A. Complaint 21-49 Buchanan Funeral Service, Oklahoma City; Tak-N-Kar, LLC, Oklahoma City; Kenneth Buchanan II, FDIC, Oklahoma City.

Member Cooper needs to be recused.

6B. Complaint 21-54 Delozier Funeral Service, LLC, Chelsea; Delozier Funeral Service, LLC, Owner, Chelsea; Kenneth Delozier, FDIC, Chelsea. Member Cooper needs to be recused.

6C. Complaint 22-08 Dillon Funeral Service, LLC, Sand Springs; Dillon Funeral Service, LLC, Owner, Sand Springs; Preston McCurtain, FDIC, Sand Springs. Member Roberts needs to be recused.

7. Vote to affirm or disaffirm the issuance of the following licenses, registrations, certificates, dissolution or other action

A. Apprenticeship (Original)

1. Aiden Richey, Edmond, Hahn-Cook, OKC
2. Chad Kaminski, Ada, Criswell FH, Ada
3. Allexia Ernest, Bartlesville, Stumpff FH, Bartlesville
4. Joseph Campbell, Talihina, McCarn FS, Talihina
5. Sarah Blank, Edmond, Corbett FH, OKC
6. Monty Danderson, Collinsville, Adamscrest, Tulsa
7. Whitney Phillips, Durant, Brown's FS, Durant
8. Steven Hodge, Chandler, Parks Brothers, Prague
9. Kristen Wajda, Moore, Ingram, Smith & Turner, Yukon
10. Jayden Anderson, Edmond, Ingram, Smith & Turner, Yukon

11. Macie Herndon, Edmond, Ingram, Smith & Turner, Yukon

B. Apprenticeship (1st extension)

1. Cadyn Brice, Edmond, Memorial Park, OKC
2. Akeah Aschmeller, Edmond, Ford FS, Midwest City
3. Amber Shelley, OKC, John Ireland, Moore

C. Apprenticeship (2nd extension)

1. Daysha Ross, Stilwell, Reed-Culver, Tahlequah
2. Paul Bruns, Edmond, OK Cremation, OKC
3. Jennifer Pointer, Durant, Holmes-Coffey-Murray, Durant

D. Apprenticeship Original (FD Only)

1. Gatlin Scott, Bartlesville, Cremation Society, Tulsa

E. Funeral Director and/or Embalmer (Reciprocal)

1. Kendra Soley, Mississippi

F. Establishments

1. Ray and Martha's FH, Anadarko, request to change FDIC from Kirsten Johnson to Jennice Jeter.
2. Tishomingo Funeral Home, Tishomingo, request to change name to Hartwell Funeral Home, Tishomingo
3. Forever Memories FS, Roland, request to change FDIC from David Hampton to Curtis Brown
4. Forever Memories FS, Sallisaw, request to change FDIC from David Hampton to Curtis Brown

8. **New Business.** Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda. 25 O.S. Section 311.9.
9. **Executive Director's Report**
 - A. Agency Financial update
 - B. 2022 License Renewals
10. **Review, discussion by the Board members, and possible action regarding proposed changes to the Oklahoma Funeral Board Statutes:**
 - A. Quorum Amount Change
 - B. FD/EM Licensing education requirements
 - C. FD Only additional hours requirement
11. **Adjournment**

Tyler Stiles, MBA
Executive Director

The next regular meeting of the Oklahoma Funeral Board will be held:
December 9, 2021. Office of Chief Medical Examiner –OKC 921 N.E. 23rd Street
Conference Room – 1st Floor Oklahoma City, OK 73105.



MINUTES OF A REGULAR MEETING

OKLAHOMA FUNERAL BOARD
3700 N. Classen, Suite 175
Oklahoma City, Oklahoma 73118

October 14, 2021

BOARD MEMBERS

Tom Coble
J. Cooper
Joe Highberger
Brent Matherly
Jim Roberts
Mike Sanders
Chad Vice

STAFF

Shayne Melton
Ashton Poarch, AAG
Rochelle Robinson
Tyler Stiles

MEETING PLACE: MEETING PLACE: Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard>
We ask that only Board Members, Staff, and Respondents use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105. Face masks are required to be worn if attending in person.

This Board meeting notice and agenda was posted on our web site (www.ok.gov/funeral) on October 8, 2021 at 1:30pm

Continuing Education credit was not provided for this meeting if attended via videoconference or telephone.

President Highberger called the meeting to order at 10:00AM. Board Members Coble, Cooper, Highberger, Matherly, Roberts, Sanders, and Vice were present. A quorum was always present.

Reading of the Oklahoma Funeral Board mission statement:

The mission of the Oklahoma Funeral Board is to act in the public interest and for the protection of the public within the powers vested in the Board by the State of Oklahoma for the regulation and education of the funeral service profession.

Motion by Roberts second by Highberger to approve the September 9, 2021 Special Board meeting minutes. The motion passed unanimously with Member Coble abstaining.

Dustin Pierce with OKFDA thanked Mr. Highberger and Mr. Stiles for coming to the Fall District meetings and speaking with OKFDA members and providing the CE training. OKFDA will be going to the NFDA Convention in Nashville October 17-20, 2021.

Motion by Highberger second by Coble to dismiss complaint 22-03 regarding embalming issues. The motion passed unanimously.

Motion by Highberger second by Matherly to dismiss complaint 22-04 regarding Not Returning Cremated Remains. The motion passed unanimously.

Motion by Highberger second by Sanders to dismiss complaint 22-06 regarding Body Preparation Issues. The motion passed unanimously.

Motion by Highberger second by Sanders to dismiss complaint 22-07 regarding Overcharging. The motion passed unanimously.

Motion by Highberger second by Coble to find probable cause on complaint 22-08 regarding Body Intake Log Issues. The motion passed unanimously.

Regarding the matters for consideration: Consent Order or Scheduling Order: Complaint 21-51 Nichols-Stephens Funeral & Cremation Services, Establishment, Grove; Nichols-Stephens Funeral & Cremation Services, Limited, Owner, Grove; Karin Stephens, FDIC, Grove. Respondent Karin Stephens was present via videoconference. The prosecution was represented by Ashton Poarch, AAG. Thomas Schneider, AAG, was the Board's legal advisor. Members Coble, Highberger, Matherly, Roberts, Sanders, and Vice heard the case. Member Cooper was recused from the case and he left the room.

After the presentation of the agreed upon Consent Order, motion by Highberger second by Roberts to accept the Consent Order. The consent order consisted of the following: The agreed violations were: failure to maintain an up-to-date body intake log, not having the FDIC reflected on the Body Intake Log, violation of the Funeral Service Licensing Act, and Rules of the Board. The terms consisted of the following: Administrative Penalty of \$250 and Costs of \$250. Motion passed unanimously.

Regarding the matters for consideration: Consent Order or Scheduling Order: Complaint 21-54 Delozier Funeral Service, LLC, Chelsea; Delozier Funeral Service, LLC, Owner, Chelsea; Kenneth Delozier, FDIC, Chelsea. The respondents did not appear. The prosecution was represented by Ashton Poarch, AAG. Thomas Schneider, AAG, was the Board's legal advisor. Members Coble, Highberger, Matherly, Roberts, Sanders, and Vice heard the case. Member Cooper was recused from the case and he left the room.

Motion by Highberger second by Sanders to table the Consent Order. The motion passed unanimously.

Member Cooper reentered the room.

Motion by Roberts second by Highberger to approve the following: Apprenticeship (Original) Cecil Richards, Idabel, Nunley's FH, Idabel; Lance Pardue, Hugo, Prater Lampton Mills and Coffey, Hugo; Tyler Johnson, Commerce, Brown-Winters FH, Miami; Roosevelt Murray, Idabel, Nunley FH, Idabel; Taylor Harris, Edmond, Buchanan FS, OKC; Jordyn Coulson, Stillwater, Strode FH, Stillwater; Graciela Guillen, Woodward, Billings FH, Woodward; Mathew Burch, Antlers, Serenity FS, Antlers; John Davis, Swink, Miller and Miller FH, Hugo; Jessie Hopkins, Colbert, Prater-Lampton-Mills-Coffey, Hugo; Roy Kerns, Adair, Shipman's, Pryor. The motion passed unanimously.

Motion by Roberts second by Highberger to table the following: Apprenticeship (Original) Samantha Hays, Duncan, Bailes-Polk FH, Duncan. The motion passed unanimously.

Motion by Roberts second by Coble to approve the following: Apprenticeship (1st extension) Emily Vickery, Arapaho, Ingram, Smith & Turner, Yukon; Addison Ray, Clinton, Corbett FH, OKC; Haley Buller, Yukon, Ingram Smith & Turner, Yukon. The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following: Apprenticeship (3rd extension) Stephen Smith, Midwest City, Ford FS, Midwest City; Hillary Hatchett, OKC, Resthaven FH, OKC. The motion passed unanimously.

Motion by Roberts second by Coble to approve the following: Apprenticeship (FD Only) Debra-Emily Crump, Choctaw, Hibbs FH, Choctaw. The motion passed unanimously.

Motion by Roberts second by Highberger to table the following: Funeral Director and/or Embalmer (Reciprocal) Kendra Soley, Mississippi. The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following: Funeral Director and/or Embalmer (Original) Melanie Holcomb, Newkirk; Christopher Gann, Broken Bow (FD Only); Kristen Kennedy, Calumet. The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following: Establishments, McElyea & Owens Funeral Group, LLC, Shawnee, New Establishment, McElyea & Owens Funeral Group, LLC, Owner, Michael McElyea, FDIC.; Dighton-Moore Funeral Service, Owasso, request to close establishment.; Dighton-Moore Funeral Service, Owasso, New Establishment, R & S Funeral Homes, Inc., Owner, John Irby, FDIC; CremationCare+, Tulsa, request to change FDIC from Bill Cotton to Rex Whitetree; Rice Funeral & CremationCare +, Catoosa, request to change FDIC from Bill Cotton to Rex Whitetree; Signature Cremation & Funeral Care, OKC, request to close establishment; Signature Cremation & Funeral Care, The Village, New Establishment, Crawford Family Funeral and Cremation, Edmond, Owner, Kyle Borowicz, Edmond, FDIC; McKay-Davis & Tate Funeral Home & Cremation, OKC, request name change to McKay-Davis Funeral Home, Inc.; Sevier FH, Chickasha, request to change FDIC from Larry Sevier to Austin Kile; Sevier FH, Tuttle, request to change FDIC from Larry Sevier to Austin Kile. The motion passed unanimously.

Motion by Roberts second by Highberger to approve the following: Crematories, Heartland Cremation Service, LLC, Chandler, New Crematory, Brown's Family Funeral Home, LLC, Owner, Tim Alonzo, FDIC. The motion passed unanimously.

No New Business was discussed

Discussion and Possible Action Regarding Proposed Rule or Statute changes for next Legislative Session pertaining to the following- Quorum Amount Change- Motion by Coble second by Cooper to change the quorum from 3 members to 4 members. The motion passed with Coble, Cooper, Matherly, Roberts, and Vice voting Aye. Highberger and Sanders voted No.

Member Cooper left the meeting and did not return.

Discussion and Possible Action Regarding Proposed Rule or Statute changes for next Legislative Session pertaining to the following- Licensing education requirements- Motion by Highberger second by Sanders to remove the additional 60 hours of general education to become licensed for funeral director and embalmer program. The motion passed unanimously.

Discussion and Possible Action Regarding Proposed Rule or Statute changes for next Legislative Session pertaining to the following-FD Only additional Hours requirement- Motion by Highberger second by Sanders to remove the additional 60 hours of general education to become licensed for funeral director and embalmer program. The motion passed unanimously.

Discussion and Possible Action Regarding Proposed Rule or Statute changes for next Legislative Session pertaining to the following-FD Assistant License- No action was taken

Executive Director's Report- Agency Financial update- Mr. Stiles reported gross receipts for September 2021 to be \$9,605.00 with \$655.50 going to the State of Oklahoma general fund. The expenses for the same timeframe totaled \$50,629.37 and net income after expenses totaled -\$41,679.87.

Executive Director's Report- Agency Financial update- Mr. Stiles reported that the Health Department is providing free PPE. For those that need PPE, complete the form on the Funeral Board home page and send the order to the Health Department. The Health Department warehouse is open on Tuesdays to pick up your order.

Motion by Roberts second by Coble to adjourn the meeting at 12:03PM. The motion passed unanimously.

Joe Highberger
Oklahoma Funeral Board President

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

BUCHANAN FUNERAL SERVICE

A Licensed Funeral Establishment,
Establishment License # 1665ES
8712 N. Council Rd.
Oklahoma City, OK 73132

owned by:

TAK-N-KAR, LLC.

8712 N. Council Rd.
Oklahoma City, OK 73132

KENNETH R. BUCHANAN II,

Licenses: 2453FD and 2596EM,

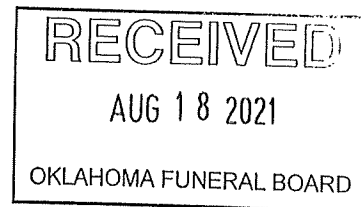
Address: 8601 NW 73RD
Oklahoma City, OK 73132

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

BUCHANAN FUNERAL SERVICE,

Respondents.

Complaint No. 21-49



COMPLAINT AND NOTICE OF HEARING

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Marie Schuble, and alleges that the Respondents, an Establishment and a Funeral Director in Charge, duly licensed by the Board have violated provisions of the State Funeral Services Licensing Act, 59 O.S. § 395.1 et seq, (the "Act"), and Rules of the Board, Oklahoma Administrative Code ("OAC") Section 235:10-1-1 et seq, (the "Rules"), in the manner set forth below:

FACTUAL ALLEGATIONS

1. Respondent BUCHANAN FUNERAL SERVICE, (“Funeral Home”), with establishment license number 1665ES, located at 8712 N. Council Rd., Oklahoma City, OK 73132, was at all relevant times owned by TAK-N-KAR, LLC., 8712 N. Council Rd., Oklahoma City, OK 73132, and as such, BUCHANAN FUNERAL SERVICE, is liable and responsible for any penalty imposed in these proceedings.
2. Respondent KENNETH R. BUCHANAN II is a licensed Funeral Director and Embalmer with license numbers 2453FD and 2596EM, and was the Funeral Director in Charge (“FDIC”) of Funeral Home at the time of the conduct giving rise to this complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. § 396.2(12).
3. On May 27, 2021, Board staff filed a complaint with the Oklahoma Funeral Board alleging that Respondents advertised its business at a separate location (8601 NW Expressway, Oklahoma City) that had not been issued a funeral service establishment license, and held public visitations at the unlicensed location for at least five (5) decedents between February 25, 2021 and May 27, 2021. An establishment license had not been applied for to operate and conduct operations at the advertised 8601 NW Expressway location.
 - a. Prior to filing the complaint, Board staff had been communicating by phone and email with Respondent regarding the need to apply for a license for the 8601 NW Expressway location.
 - b. On February 25, 2021, Respondent contacted the Funeral Board Executive Director by email about water damage to the funeral home and needing to finalize a temporary location.

- c. The Executive Director followed up with Respondent on March 1, 2021, advising Respondent of the need to apply for a temporary establishment license at the temporary location before it is used and have an inspection.
 - d. On March 5, 2021 Respondent responded thanking the Executive Director for the reply.
 - e. On March 8, 2021, the Executive Director responded with the statutory citation requiring a temporary establishment license before any arrangements, visitations or casket selections can take place anywhere other than the licensed location.
 - f. On March 9, 2021, the Executive Director followed-up again with Respondent reiterating the need for a temporary establishment license.
 - g. No application for temporary location was ever received at the Oklahoma Funeral Board office.
 - h. Respondent held a visitation for J.J.L. on March 29, 2021 at 8601 NW Expressway.
 - i. Respondent held a visitation for D.L.L. on April 14, 2021 at 8601 NW Expressway.
 - j. Respondent held a visitation for A.F.S. on May 11, 2021 at 8601 NW Expressway.
 - k. Respondent held a visitation for F.K.S. on May 23, 2021 at 8601 NW Expressway.
 - l. Respondent held a visitation for K.L. on May 27, 2021 at 8601 NW Expressway.
4. Notice of the Complaint was subsequently provided to the Respondents by letter dated May 27, 2021. On June 8, 2021, the Respondents filed with the Board their response to Complaint 21-49, stating as follows:
- a. Respondents state that due to the freeze that occurred in February 2021, it had severe damage to its premises and could not be used to serve its clients. Respondents arranged to have visitations held at a church, and the signage was put up to assist clients in locating the visitation location. Embalming was still occurring at the licensed

establishment location. By the time the complaint was received, Respondents had ceased using the church location.

5. This matter was presented to the Board on August 12, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.

6. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence of the violations alleged.

ALLEGED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).
2. The statutory list of relevant violations for which the Board may suspend or revoke a license is found at 59 O.S. § 396.12c, which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

5. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;

8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

3. Respondents violated 59 O.S. § 396.12c(5) when they violated 59 O.S. § 396.12(A) and (B) by advertising and holding visitations at an unlicensed location. 59 O.S. § 396.12(A) and (B) with emphasis provides:

(A) Any place where a person shall hold forth by word or act that the person is engaged in the profession of undertaking or funeral directing shall be deemed as a funeral establishment and shall be licensed as such pursuant to the provisions of the Funeral Services Licensing Act.

(B) A funeral establishment shall not do business in a location that is not licensed as a funeral establishment, shall not advertise a service that is available from an

unlicensed location, and shall advertise itself by the name that the establishment is licensed as pursuant to the Funeral Services Licensing Act.

4. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(2) by operating under an establishment license at an address that was not licensed as a funeral establishment. Board rule OAC 235:10-3-2(2) with emphasis added provides:

(2) The establishment shall have a fixed place of business with a *specific street address or physical location... Only one establishment license will be issued to a specific address...*

5. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(11) by operating under an establishment license at a location that was not licensed as a funeral establishment. Board rule OAC 235:10-3-2(11) with emphasis added provides:

(11) *No establishment license is transferable from one person to another, or from one location to another. ...*

6. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-7-2(15) by failing to apply for an establishment license for the change of address for the temporary location advertised. Board rule OAC 235:10-7-2(15) – Prohibited Acts, with emphasis added provides:

(15) **Failure to submit application of establishment license.** Failure to notify the Board of a change of ownership, sale, purchase, lease, change of name, *change of address*, or change of funeral director in charge within ten (10) business days.

7. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-7-2(17) by advertising services at an unlicensed location, which is misleading to the public. Board rule OAC 235:10-7-2(17) – Prohibited Acts, with emphasis added provides:

(17) **False or misleading advertising.** *The use of false or misleading advertising* or advertising a name other than the name the individual or establishment is licensed as.

8. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-15-3 by advertising itself as being located at an unlicensed location, which is misleading to the public. Board rule OAC 235:10-15-3, with emphasis added provides:

No licensee shall publish or disseminate false, misleading, or deceptive advertising. An advertisement may not contain statements (1) containing a misrepresentation of facts; (2) likely to mislead or deceive because in context the statements make only a partial disclosure of relevant facts; (3) relating to fees without reasonable disclosure of all relevant variables... (4) any name other than the name the establishment or individual is licensed as; (5) using the name crematory in conjunction with a funeral establishment....

9. Respondents violated 59 O.S. Section 396.12c(8) when they violated OAC 235:10-7-2(26)(c) by failing to comply with the statutes and rules applicable to the Funeral Service industry.

Board rule OAC 235:10-7-2(26)(c) – Prohibited Acts, provides:

(26) **Violation of any of the Ethics Rules:** The licensee shall be knowledgeable of and comply with all federal and state laws, rules, and codes applicable to the Funeral Service industry. (c) The primary duty of the licensee is to ensure compliance with all applicable federal and state laws, rules, and codes. The licensee's position should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.

10. As the Funeral Director in Charge at the times in question, KENNETH R. BUCHANAN II is responsible for the legal and ethical operation of BUCHANAN FUNERAL SERVICE and is accountable to the Board under 59 O.S. § 396.2(12).

59 O.S. § 396.12(C). "Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge."

59 O.S. § 396.2(12). The "'Funeral director in charge' means an individual licensed as a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board."

11. Respondents BUCHANAN FUNERAL SERVICE, and KENNETH R. BUCHANAN II are subject to disciplinary action by the Board pursuant to 59 O.S. §§ 396.2a(9), 396.12c(5), 396.12c(8), 396.12d and 396.12e. The violation of any Board rule or of a provision of the Funeral Services Licensing Act subjects to discipline the respective Respondents who violated it. 59 O.S. §§ 396.12(c)(5)(violation of statute) and (8)(violation of rule).

POTENTIAL PENALTIES THE BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. Potential administrative penalties identified in 59 O.S. § 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9),

396.12c, 396.12d and 396.12e a **joint proposed Consent Order** may be presented at the Board meeting on: **THURSDAY, SEPTEMBER 9, 2021, at 10:00 A.M.**

MEETING PLACE:

Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard> We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

If no Consent Order is presented or approved by the Board on September 9, 2021, then an **EVIDENTARY HEARING** will be held at the same meeting on: **THURSDAY, SEPTEMBER 9, 2021, at 10:00 A.M.**

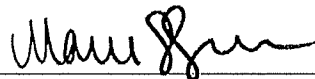
If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf.

However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent

himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



Marie Schuble, OBA # 30247
Assistant Attorney General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Marie.Schuble@oag.ok.gov
Attorney for Oklahoma Funeral Board

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either mailing by Certified Mail or by handing to a process server for service in person, as follows:

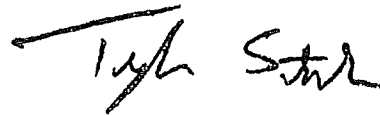
BY CERTIFIED MAIL:

BUCHANAN FUNERAL SERVICE
8712 N. Council Rd.
Oklahoma City, OK 73132

KENNETH R. BUCHANAN II
8601 NW 73RD
Oklahoma City, OK 73132

BY EMAIL:

ERIC S. KROIER, OBA#33017
Kroier Law, PLLC
esk@kroierlaw.com
Attorney for Respondents



Tyler Stiles, MBA
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

BUCHANAN FUNERAL SERVICE

A Licensed Funeral Establishment,
Establishment License # 1665ES
8712 N. Council Rd.
Oklahoma City, OK 73132

owned by:

TAK-N-KAR, LLC.

8712 N. Council Rd.
Oklahoma City, OK 73132

KENNETH R. BUCHANAN II,

Licenses: 2453FD and 2596EM,

Address: 8601 NW 73RD

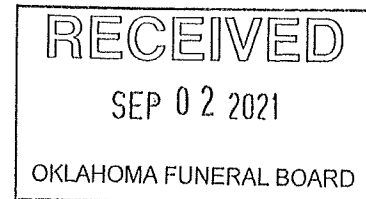
Oklahoma City, OK 73132

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

BUCHANAN FUNERAL SERVICE,

Respondents.

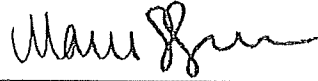
Complaint No. 21-49



AGREED MOTION FOR CONTINUANCE

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Marie Schuble, and Respondent, through counsel Eric Kroier, and jointly request a continuance of the hearing in this matter, should one be required, which is currently set for September 9, 2021, as counsel for Respondent has a scheduling conflict. OAC 235:10-9-9(h) allows the Executive Director to grant a continuance for good and valid reasons.

Respectfully submitted:



Marie Schuble, OBA # 30247
Assistant Attorney General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Marie.Schuble@oag.ok.gov
Attorney for Oklahoma Funeral Board



ERIC S. KROIER, OBA#33017
Kroier Law, PLLC
esk@kroierlaw.com
Attorney for Respondents

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

BUCHANAN FUNERAL SERVICE

A Licensed Funeral Establishment,
Establishment License # 1665ES
8712 N. Council Rd.
Oklahoma City, OK 73132

owned by:

TAK-N-KAR, LLC.

8712 N. Council Rd.
Oklahoma City, OK 73132

KENNETH R. BUCHANAN II,

Licenses: 2453FD and 2596EM,

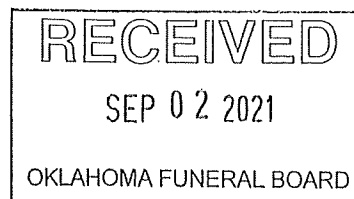
Address: 8601 NW 73RD
Oklahoma City, OK 73132

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

BUCHANAN FUNERAL SERVICE,

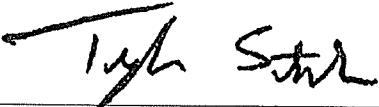
Respondents.

Complaint No. 21-49



ORDER FOR CONTINUANCE

COMES NOW, the Executive Director of the Oklahoma Funeral Board upon a joint motion of the parties requesting a continuance of the administrative hearing set in this matter. The undersigned finds that a continuance should be granted due to a scheduling conflict, which constitutes a good and valid reason. The hearing, currently set for September 9, 2021, shall be continued to November 10, 2021.



Tyler Stiles, MBA
Executive Director

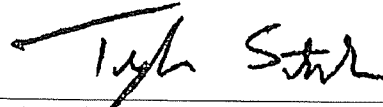
CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2021, a true and correct copy of the foregoing *Order for Continuance* was served as follows:

BY EMAIL:

Marie Schuble, OBA#30247
Assistant Attorney General
Marie.Schuble@oag.ok.gov
Attorney for OFB

ERIC S. KROIER, OBA#33017
Kroier Law, PLLC
esk@kroierlaw.com
Attorney for Respondents

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

DELOZIER FUNERAL SERVICE, LLC.

A Licensed Funeral Establishment,
Establishment License # 1861ES
806 Walnut
Chelsea, OK 74016

owned by:

DELOZIER FUNERAL SERVICE, LLC.

806 Walnut
Chelsea, OK 74016

KENNETH DELOZIER, JR.,

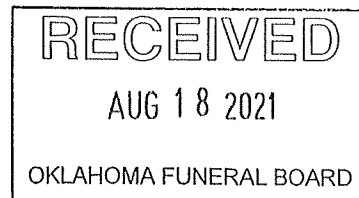
Licenses: 3331FD and 3696EM,
Address: 21990 E. HWY 28
Chelsea, OK 74016

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

DELOZIER FUNERAL SERVICE, LLC.,

Respondents.

Complaint No. 21-54



COMPLAINT AND NOTICE OF HEARING

COMES NOW the State of Oklahoma, ex rel., Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Marie Schuble, and alleges that the Respondents, an Establishment and a Funeral Director in Charge, duly licensed by the Board have violated provisions of the State Funeral Services Licensing Act, 59 O.S. § 395.1 et seq, (the "Act"), and Rules of the Board, Oklahoma Administrative Code ("OAC") Section 235:10-1-1 et seq, (the "Rules"), in the manner set forth below:

FACTUAL ALLEGATIONS

1. Respondent DELOZIER FUNERAL SERVICE, LLC., (“Funeral Home”), with establishment license number 1861ES, located at 806 Walnut, Chelsea, OK 74016, was at all relevant times owned by DELOZIER FUNERAL SERVICE, LLC., 806 Walnut, Chelsea, OK 74016, and as such, DELOZIER FUNERAL SERVICE, LLC., is liable and responsible for any penalty imposed in these proceedings.
2. Respondent KENNETH DELOZIER, JR. is a licensed Funeral Director and Embalmer with license numbers 3331FD and 3696EM, and was the Funeral Director in Charge (“FDIC”) of Funeral Home at the time of the conduct giving rise to this complaint, and as the FDIC was responsible for the establishment’s legal and ethical operation pursuant to 59 O.S. § 396.2(12).
3. On or about June 8, 2021, Board staff conducted an inspection of the Funeral Home and determined that the Body Intake Log was deficient, and prices were not displayed on the caskets. The deficiencies of the Body Intake Log included: name of the FDIC was not listed on the Log; not all bodies received at the Funeral Home were listed in the Log; there were no dates or times reflecting when the bodies were received; the dates and times of embalming were not listed in the Log; the embalmer did not sign the Log; and the embalmer license number was not in the Log. The Establishment was provided with a copy of the inspection report.
4. On June 21, 2021, Board staff filed a complaint with the Oklahoma Funeral Board, and notice was subsequently provided to the Respondents by letter dated June 21, 2021. On June 28, 2021, the Respondents filed with the Board their response to Complaint 21-54, stating as follows:
 - a. Respondents believe that all necessary steps have been taken to correct the deficiencies noted in the inspection and included with the response an updated Log and photographs of the caskets with prices displayed.

5. This matter was presented to the Board on August 12, 2021, for a probable cause determination, and the Board found probable cause to file a formal complaint against the Respondents.

6. The prosecution has sufficient evidence which if presented to the Board at an evidentiary hearing would constitute clear and convincing evidence of the violations alleged.

ALLEGED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).
2. The statutory list of relevant violations for which the Board may suspend or revoke a license is found at 59 O.S. § 396.12c, which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

5. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;

8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

3. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(5) by failing to have a complete and up-to-date Body Intake Log. Board rule OAC 235:10-3-2(5)(vii) with emphasis added provides:

(vii) **Body Intake Log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. **The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s).** If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

4. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(10) by failing to list the FDIC on the Body Intake Log. Board rule OAC 235:10-3-2(10) provides:

(10) Funeral Director in Charge. The Funeral Director in Charge shall be listed on the original establishment application and any subsequent establishment renewal applications, and **on the body intake log.**

5. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-7-2(5) by failing to display prices on the caskets displayed for sale, which is a violation of 36 O.S. § 6127:

Any organization or person offering for sale caskets or other articles of merchandise incidental to burial or funeral services shall prominently display thereon the retail price of said caskets, or other articles of merchandise.

6. As the Funeral Director in Charge at the times in question, KENNETH DELOZIER, JR. is responsible for the legal and ethical operation of DELOZIER FUNERAL SERVICE, LLC., and is accountable to the Board under 59 O.S. § 396.2(12).

59 O.S. § 396.12(C). “Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.”

59 O.S. § 396.2(12). The “‘Funeral director in charge’ means an individual licensed as a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.”

7. Respondents DELOZIER FUNERAL SERVICE, LLC., and KENNETH DELOZIER, JR. are subject to disciplinary action by the Board pursuant to 59 O.S. §§ 396.2a(9), 396.12c(5), 396.12c(8), 396.12d and 396.12e. The violation of any Board rule or of a provision of the Funeral Services Licensing Act subjects to discipline the respective Respondents who violated it. 59 O.S. §§ 396.12(c)(5)(violation of statute) and (8)(violation of rule).

POTENTIAL PENALTIES THE BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of

administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. Potential administrative penalties identified in 59 O.S. § 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e a **joint proposed Consent Order** may be presented at the Board meeting on: **THURSDAY, OCTOBER 14, 2021, at 10:00 A.M..**

MEETING PLACE:

Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard> We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

If no Consent Order is presented or approved by the Board on October 14, 2021, then an **EVIDENTARY HEARING** will be held at the same meeting on: **THURSDAY, OCTOBER 14, 2021, at 10:00 A.M.**

If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced law, the Board may take whatever appropriate action that is provided for in its rules and statutes. The Respondents are advised that in accordance with the above-referenced legal authority that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf.

However, if a Respondent is not a person but is instead an entity such as a corporation or an LLC, although the corporation or LLC may by law enter into a consent order without an attorney, if an evidentiary hearing is required the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. See *Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the

person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not under such circumstances present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



Marie Schuble, OBA # 30247
Assistant Attorney General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Marie.Schuble@oag.ok.gov
Attorney for Oklahoma Funeral Board

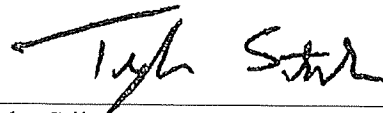
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either mailing by Certified Mail or by handing to a process server for service in person, as follows:

BY CERTIFIED MAIL:

DELOZIER FUNERAL SERVICE, LLC.
806 Walnut
Chelsea, OK 74016

KENNETH DELOZIER, JR.,
21990E. HWY 28
Chelsea, OK 74016

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA
Executive Director

**BEFORE THE OKLAHOMA FUNERAL BOARD
STATE OF OKLAHOMA**

**IN THE MATTER OF THE COMPLAINT
AGAINST:**

DILLON FUNERAL SERVICE, LLC

A Licensed Funeral Establishment,
Establishment License # 1988ES
1200 N. Cleveland Avenue
Sand Springs, OK 74063

owned by:

DILLON FUNERAL SERVICE, LLC

1200 N. Cleveland Avenue
Sand Springs, OK 74063

PRESTON MCCURTAIN

Licenses: 3106FD and 3485EM,

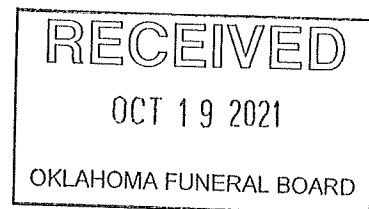
Address: 5314 Redbud Drive
Sand Springs, OK 74063

A Licensed Funeral Director and Embalmer
and the Funeral Director in Charge at

DILLON FUNERAL SERVICE, LLC,

Respondents.

Complaint No. 22-08



COMPLAINT AND NOTICE OF HEARING

COMES NOW the State of Oklahoma, *ex rel.*, Oklahoma Funeral Board ("Board"), by and through Assistant Attorney General Ashton Poarch, and alleges that the Respondents, an Establishment and a Funeral Director in Charge, duly licensed by the Board, have violated provisions of the State Funeral Services Licensing Act, 59 O.S. § 395.1 *et seq.*, (the "Act"), and Rules of the Board, Oklahoma Administrative Code ("OAC") Section 235:10-1-1 *et seq.*, (the "Rules"), in the manner set forth below:

FACTUAL ALLEGATIONS

1. Respondent DILLON FUNERAL SERVICE, LLC ("Funeral Home"), with establishment license number 1988ES, located at 1200 N. Cleveland Avenue, Sand Springs, OK 74063, was at all relevant times owned by DILLON FUNERAL SERVICE, LLC, 1200 N. Cleveland Avenue, Sand Springs, OK 74063, and as such, DILLON FUNERAL SERVICE, LLC, is liable and responsible for any penalty imposed in these proceedings.

2. Respondent PRESTON MCCURTAIN is a licensed Funeral Director and Embalmer with license numbers 3106FD and 3485EM, and was the Funeral Director in Charge ("FDIC") of Funeral Home at the time of the conduct giving rise to this complaint and, as the FDIC, was responsible for the establishment's legal and ethical operation pursuant to 59 O.S. § 396.2(12).

3. On or about August 23, 2021, Board staff conducted an inspection of the Funeral Home and determined that the Body Intake Log was deficient: not all bodies received at the Funeral Home were listed in the Log; there were no dates or times reflecting when the bodies were received; the dates and times of embalming were not listed in the Log; the embalmer did not sign the Log; the name, signature and embalmer license number were not in the Log; and the name, signature and apprentice license number were not in the Log. The Funeral Home was provided with a copy of the inspection report.

4. On September 10, Board staff filed a complaint with the Oklahoma Funeral Board, and notice was subsequently provided to the Respondents by letter dated September 14, 2021. On September 24, 2021, the Respondents filed their response to Complaint 22-08 with the Board, stating as follows:

- a. Respondents apologized to the Board for the deficiencies noted in the inspection and included an updated and complete Body Intake Log.

5. This matter was presented to the Board on October 14, 2021 for a probable cause determination; the Board found probable cause to file a formal complaint against the Respondents.

6. The prosecution has sufficient evidence, which, if presented to the Board at an evidentiary hearing, would constitute clear and convincing evidence of the violations alleged.

ALLEGED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondents pursuant to 59 O.S. § 396.2a(9) and (11).

2. The statutory list of relevant violations for which the Board may suspend or revoke a license is found at 59 O.S. § 396.12c, which provides:

After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma Funeral Board may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

5. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;

8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

3. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(5) by failing to have a complete and up-to-date Body Intake Log. Board rule OAC 235:10-3-2(5)(vii), with emphasis added, provides:

(vii) **Body Intake Log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. **The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s).** If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

4. Respondents violated 59 O.S. § 396.12c(8) when they violated OAC 235:10-3-2(10) by failing to list the FDIC on the Body Intake Log. Board rule OAC 235:10-3-2(10), with emphasis added, provides:

(10) Funeral Director in Charge. The Funeral Director in Charge shall be listed on the original establishment application and any subsequent establishment renewal applications, and **on the body intake log.**

5. As the Funeral Director in Charge at the times in question, PRESTON MCCURTAIN is responsible for the legal and ethical operation of DILLON FUNERAL SERVICE, LLC, and is accountable to the Board under 59 O.S. § 396.2(12).

59 O.S. § 396.12(C). “Every funeral establishment, commercial embalming establishment, and crematory shall be operated by a funeral director in charge.”

59 O.S. § 396.2(12). The “‘Funeral director in charge’ means an individual licensed as a funeral director and embalmer designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.”

6. Respondents DILLON FUNERAL SERVICE, LLC, and PRESTON MCCURTAIN are subject to disciplinary action by the Board pursuant to 59 O.S. §§ 396.2a(9), 396.12c(5), 396.12c(8), 396.12d and 396.12e. The violation of any Board Rule or of a provision of the Funeral Services Licensing Act subjects the respective Respondents to discipline. 59 O.S. §§ 396.12(c)(5) (violation of statute) and (8) (violation of rule).

POTENTIAL PENALTIES THE BOARD MAY IMPOSE

1. The Board may impose a variety of penalties for violation of the Act or of Board Rules, including: (1) denial, revocation, suspension or nonrenewal of license; (2) imposition of administrative fines; (3) injunctive proceedings; and (4) other disciplinary action. 59 O.S. §§ 396.12c, 396.12d and 396.12e.

2. Potential administrative penalties identified in 59 O.S. § 396.12e are:

A. Any person or entity who has been determined by the Oklahoma Funeral Board to have violated any provision of the Funeral Services Licensing Act or any rule or order issued pursuant thereto may be liable for an administrative penalty. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The Board shall be authorized, at its discretion, to take action as the nature of the violation requires. The Board shall have the authority to impose on the licensee, or certificate holder, as a condition of any adverse disciplinary action, the payment of costs expended by the Board in investigating and prosecuting the violation. The costs may include but are not limited to staff time, salary and travel expenses, witness fees and attorney fees, and shall be considered part of the order of the Board.

C. The amount of the penalty shall be assessed by the Board pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation and, with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of the Funeral Services Licensing Act. The Board shall make a report of any action to any entity deemed appropriate for transmittal of the public record but shall in no cause be held liable for the content of the reported action or be made a party to any civil liability action taken as a result of the discipline imposed by the Board. All monies collected from the administrative penalties shall be deposited with the State Treasurer and by the State Treasurer placed in the "Fund of the Oklahoma Funeral Board ", created pursuant to Section 17 of this act.

D. Any license or certificate of apprenticeship holder may elect to surrender the license or certificate of apprenticeship of the person in lieu of said penalty but shall be forever barred from obtaining a reissuance of said license or certificate of apprenticeship.

NOTICE OF HEARING

In accordance with the jurisdiction granted this tribunal in 59 O.S. §§ 396.2a(7) & (9), 396.12c, 396.12d and 396.12e a **joint proposed Consent Order** may be presented at the Board meeting on: **WEDNESDAY, NOVEMBER 10, 2021, at 10:00 A.M..**

MEETING PLACE:

Videoconference at <https://oklahomafuneralboard.my.webex.com/meet/Funeralboard> We ask that only the Respondents in a complaint use the video camera function. If calling in by telephone please call 1-408-418-9388; Access Code 1260612143. If attending in person at the physical location: Office of Chief Medical Examiner OKC, 921 N.E. 23rd Street Conference Room 1st Floor Oklahoma City, OK 73105.

If no Consent Order is presented or approved by the Board on November 10, 2021, then an **EVIDENTARY HEARING** will be held at the same meeting on: **WEDNESDAY, NOVEMBER 10, 2021, at 10:00 A.M.**


If it be the decision of the Board, after considering all of the evidence presented, that a Respondent is in violation of any of the above-referenced laws, the Board may take whatever appropriate action that is provided for in its rules and statutes. In accordance with the above-referenced legal authority, the Respondents are advised that they have the right to appear personally, the right and obligation to submit a written response, and the right to appear through an attorney. In addition, the Respondents have the right to cross-examine witnesses and present evidence on their own behalf.

However, if a Respondent is not a person but is instead an entity, such as a corporation or an LLC, although the corporation or LLC may enter into a consent order without an attorney by law, and if an evidentiary hearing is required, the Respondent corporation or LLC by law may only cross-examine witnesses, present evidence and/or defend itself at the hearing if it is represented by an attorney licensed in the State of Oklahoma. *See Redcorn, Jr., v. Knox*, 2014 OK CIV APP 109, 345 P.3d 392 (an agreed order is in the nature of a contract by which a corporation is bound even if not represented by an attorney); *Massongill v McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438 (although a person may appear at a hearing and represent himself/herself without an attorney, a person is not able to appear on behalf of a corporation, regardless of the person's interest in the corporation or authorization by the corporation, unless the person is a licensed attorney). If a Respondent corporation or LLC chooses not to retain an attorney, although it may not, under such circumstances, present evidence on its own behalf, the Board might consider favorable (or unfavorable) evidence submitted by co-

Respondents or the State when considering the violations alleged against the Respondent corporation or LLC. *See Enochs v. Martin*, 1997 OK 132, 954 P.2d 124 (even though a corporation had no attorney and was therefore in default, the court could in the absence of any objection at the hearing consider in the corporation's favor evidence offered in the case in joint defense by one of the other named parties).

Therefore, the Respondents are directed to appear at said hearing on said date and time. If a Respondent does not appear in person or through an attorney, the hearing will be held in its absence. **Note: OAC Section 235:10-7-2(21) requires that each Respondent must submit to the Board a response to this Complaint within ten (10) days of receipt of the Complaint.**

Respectfully submitted:



Ashton Poarch, OBA # 34308
Assistant Attorney General
Office of the Oklahoma Attorney General
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ashton.poarch@oag.ok.gov
Attorney for Oklahoma Funeral Board

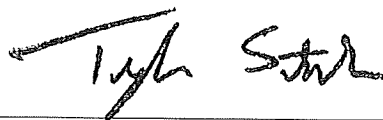
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2021, a true and correct copy of the foregoing *Complaint and Notice of Hearing* was served either mailing by Certified Mail or by handing to a process server for service in person, as follows:

BY CERTIFIED MAIL:

DILLON FUNERAL SERVICE, LLC
1200 N. Cleveland Avenue
Sand Springs, OK 74063

PRESTON MCCURTAIN
5314 Redbud Drive
Sand Springs, OK 74063

A handwritten signature in black ink, appearing to read "Tyler Stiles", is written over a horizontal line.

Tyler Stiles, MBA
Executive Director

§59-396.3. Qualifications and examination of funeral directors and embalmers -
Approved schools

B. 1. Except as provided in subsection C of this section, the minimum requirements for a license to practice funeral directing or embalming, or both, are as follows: The minimum requirements for a license to practice funeral directing or embalming, or both, are as follows:

An applicant for a license to practice funeral directing or embalming shall be at least twenty (20) years of age, a legal resident of this state, a citizen or permanent resident of the United States. In addition, an applicant ~~shall have at least sixty (60) semester hours of study earned, measured in quarter or clock hours, from a regionally accredited college or university,~~ shall be a graduate of a program of mortuary science accredited by the American Board of Funeral Service Education, and have served one (1) year as a registered apprentice. The applicant may serve as a registered apprentice prior to enrollment in an approved school of mortuary science, or subsequent to graduation from the school and pass the International Conference of Funeral Service Examining Board National Board Science Examination and/or Arts Examination with a 75 or higher on each exam.

C. 1. If a person chooses not to meet the qualifications in subsection B of this section for a funeral director, the person may alternatively qualify for a license to practice funeral directing, but not embalming, upon meeting the eligibility requirements of this subsection as follows: An applicant for a license to practice funeral directing shall be at least twenty (20) years of age, a legal resident of this state, a citizen or permanent resident of the United States. An applicant is required to complete a funeral director course of study approved by the Oklahoma Funeral Board and that is administered by program of mortuary science accredited by the American Board of Funeral Service Education (ABFSE). The funeral director course of Study shall include at least thirty (30) semester hours or Equivalent closely following the ABFSE curriculum standard, limited to only: Business Management, Cremation, Social Sciences/Humanities, Legal, Ethical, Regulatory, plus essential elements of embalming, restorative art, general concerns when dealing with human remains, a practicum experience and preparation for the required board exams. In addition to the funeral director course of study the applicant is required to complete ~~at least sixty (60) additional semester hours of study earned, measured in quarter or clock hours, from a regionally accredited college or university~~ and must complete a twelve-month minimum term as a registered apprentice with employment at a licensed establishment and must have assisted with twenty-five arrangement conferences and assisted with twenty five separate funeral or memorial services under the supervision of a licensed funeral director in this state. The applicant

may serve as a registered apprentice prior to enrollment in an approved school of mortuary science, concurrently while in mortuary school, or subsequent to completion of the funeral director course of study.

§59-396.22. Meetings of Board.

Meetings of the Board shall be held at least twice a year at such places as may be designated by the Board. Four ~~Three~~ members of the Board shall constitute a quorum.

END